

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B02

PLR-120678-06

Date:

August 18, 2006

X =

State =

Date =  
1

Dear

This responds to a letter dated February 6, 2006, and subsequent correspondence, submitted on behalf of X, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

### FACTS

X was incorporated in State on Date 1. It was intended that X elect S corporation treatment effective on Date 1, however, Form 2553, Election by a Small Business Corporation, was not timely filed for X. Accordingly, X requests a ruling that it will be treated as an S corporation effective Date 1.

### LAW AND ANALYSIS

Section 1362(a) provides that a small business corporation may elect to be an S corporation.

Section 1362(b) provides the rule on when an S election will be effective. Generally, if an S election is made within the first two and one-half months of a corporation's taxable year, then the corporation will be treated as an S corporation for the year in which the election is made. Section 1362(b)(3) provides that if an S election is made after the first two and one-half months of a corporation's taxable year, then the corporation will not be

treated as an S corporation until the taxable year after the year in which the S election is made.

Section 1362(b)(5) provides that if (1) an election under § 1362(a) is made for any taxable year after the date prescribed by § 1362(b) for making the election for the taxable year or no § 1362(a) election is made for any taxable year, and (2) the Secretary determines that there was reasonable cause for the failure to timely make the election, then the Secretary may treat the election as timely made for such taxable year and § 1362(b)(3) shall not apply.

## CONCLUSION

Based solely on the facts submitted and the representations made, and provided that X otherwise qualifies as an S corporation, we conclude that X will be treated as an S corporation effective Date 1, provided that within 60 days from the date of this letter, X submits a properly completed Form 2553, Election by a Small Business Corporation, with a copy of this letter attached, to the relevant service center.

Except as specifically set forth above, no opinion is expressed or implied as to the federal income tax consequences of the transaction described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether X is, in fact, an S corporation for federal tax purposes.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely,

Beverly Katz  
Senior Technician Reviewer, Branch 2  
Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)  
Copy of this letter  
Copy for § 6110 purposes

cc: